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No. 559

In the Supreme Court of the United States

OCTOBER TERM, 1961

CHOCTAWHATCHEE ELECTRICAL COOPERATIVES, INC.,
PETITIONER

v.

RAY E. GREEN, COMPTROLLER OF THE STATE OF FLORIDA

ON PETITION FOR A WRIT OF CERTIORARI TO THE SUPREME COURT OF FLORIDA

MEMORANDUM FOR THE UNITED STATES

ARCHIBALD COX,
Solicitor General,
LOUIS F. OBERDORFER,
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MEMORANDUM FOR THE UNITED STATES

This memorandum is filed in response to the Court's invitation to the Solicitor General to express the government's views on the granting of certiorari in this case.

Petitioner, a Florida corporation, executed and delivered a number of promissory notes payable to the United States to evidence loans made to it by the United States through the Rural Electrification Administration of the Department of Agriculture under the Rural Electrification Act of 1936, 49 Stat. 1363, Section 3, as amended by the Rural Electrification Act of 1938, 52 Stat. 809, 818, Section 401 (7 U.S.C. 903). The question presented is whether the Florida

documentary stamp tax (Fla. Stat. Ann. § 201.08) of one-tenth of one percent of the value of the notes[1] may constitutionally be imposed on petitioner, or whether the tax infringes the implied constitutional immunity of the federal government.

The question presented by this case is a difficult one not directly controlled by any prior decision of this Court. A decision of that question could potentially be of great importance for its implications as to the validity of other kinds of state taxes and in other areas of inter-governmental immunity. Doctrinal importance, however, is a reason against, rather than for, decision by this Court of a constitutional question not of pressing and immediate practical importance. The practical significance of this case is not in our view sufficiently great, at least at the present time, to justify review by this Court of the difficult constitutional question it presents.

The tax imposed by Florida, as mentioned above, is one-tenth of one percent of the value of the notes. Since petitioner has borrowed from the Rural Electrification Administration a little over $3,000,000 between 1941 and 1957, the actual tax involved in this case is only approximately $3,000. Moreover, even if the tax were now to be collected on all the loans made in Florida by the R.E.A. from its beginning in 1936 until 1959 ($76,700,000),[2] the total tax for that 23-year

[1] Besides notes, the Florida tax is also imposed on deeds, bills of sale, stock certificates, bonds, and various other documents. Fla. Stat. Ann. § 201.01–201.09.

[2] It is not clear whether Florida can, or desires to, collect the tax on all loans made since 1936.

period would come to only $76,700, an average of only about $3,300 a year. Florida has apparently not attempted to impose the tax on notes evidencing other kinds of loans from the United States or on any other kinds of documents resulting from transactions with the United States.

Besides Florida only one other State, South Carolina, imposes a documentary tax on promissory notes. S.C. Code (1952), § 65-681. Six other States provide for a tax on other documents.[3] It appears, however, that as a matter of administrative practice only Florida attempts to exact the tax on any documents resulting from transactions with the United States.[4]

It thus appears that the issue involved in this case is almost entirely confined, at the present time, to loans made by the R.E.A. in the State of Florida. While it is possible that Florida and other States may in the future seek to impose a documentary tax on other transactions with the United States, no such situation has yet arisen. Until there is a

[3] Alabama (1940 Code, Title 51, c. 20, Art. 2, § 618); Maryland (1957 Code, Vol. 7, Art. 81, § 277); Massachusetts (2A Ann. Laws, c. 64D, §§ 1-10); New York (McKinney's Tax Law, § 253); Pennsylvania (Purdon's Ann. Stat., Title 72, §§ 3284, 3285); West Virginia (1961 Code, Vol. 11, Title 22, § 999 (ffffff) (ggggggg)). The Pennsylvania and West Virginia statutes exempt from taxation documents resulting from certain, but not all, transactions with the United States, *i.e.*, deeds of gift to the United States and deeds in connection with condemnation proceedings.

[4] In Pennsylvania, administrative proceedings are presently in progress over the application of a Philadelphia city documentary tax on real estate conveyances to the Veterans' Administration.

clearer indication of widespread attempts to impose state documentary taxes on transactions with the United States, we do not believe that the issue in this case is of sufficient importance to warrant resolution by this Court.[*]

For the foregoing reasons, we respectfully submit that the petition for a writ of certiorari should be denied.

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MARCH 1962.

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[*] Our position here is not inconsistent with our support of the petition for certiorari in *Laurens Federal Savings & Loan Ass'n* v. *South Carolina Tax Commission*, 365 U.S. 517, involving the imposition of the South Carolina documentary stamp tax on notes evidencing loans from a Federal Home Loan Bank. That case involved a statutory exemption of "advances" made by the Bank, the scope of which, in our view (confirmed by the Court), had already been conclusively resolved by this Court's prior decision in *Pittman* v. *Home Owners' Loan Corp.*, 308 U.S. 21. This case involves not only a constitutional as opposed to a statutory question, but also a much more difficult question having wider implications. A considerably greater showing of practical importance is required to justify imposing upon the Court the greater burden that resolution of that question would entail.